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No. 87-1971

In The

Supreme Court, U.S.

FILED

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JOSEPH F. SPANIOLO, JR.

CLERK

SUPREME COURT OF THE UNITED STATES
October Term, 1987

PATRICIA ANN GRIFFIN
by and through her next friend and natural
father, **LARRY D. GRIFFIN**; and
LARRY D. GRIFFIN, individually,
Petitioners,
vs.
FORD MOTOR COMPANY,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Plaintiffs were denied procedural due process, i.e., whether Plaintiffs were accorded an opportunity to be heard on the merits of their claims.

2. Whether Plaintiffs were denied substantive due process, i.e., whether the Florida Supreme Court or the Florida Legislature acted arbitrarily or irrationally in denying Plaintiffs a substantive right of recovery.



PARTIES TO THE PROCEEDING

The parties to this case are Plaintiffs Patricia Ann Griffin and Larry Griffin and Defendant Ford Motor Company ["Ford"]. The list of Ford Motor Company's subsidiaries and affiliates required by Rule 28.1 is attached as the Appendix.



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STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

At the time the accident giving rise to this case occurred, Fla. Stat. §95.031 (2) (1985) provided as follows:

Actions for products liability and fraud under s. 95.11 (3) must be begun within the period prescribed in this chapter, with the period running from the time the facts giving rise to the cause of action were discovered with the exercise of due diligence, instead of running from any date prescribed elsewhere in s. 95.11 (3), but in any event within 12 years after the date of delivery of the completed product to its original purchaser or within 12 years after the date of the commission of the alleged fraud, regardless of the date the defect in the product or the fraud was or should have been discovered.

The due process clauses of the fifth and fourteenth amendments are correctly set forth in Plaintiff's petition.

STATEMENT OF THE CASE

This product liability action arises out of a January 23, 1985 accident involving a thirteen year old vehicle manufactured by Ford Motor Company ("Ford"). Patricia Griffin was injured in the accident.

At the time of the accident, the Florida product liability statute of repose, Fla. Stat. §95.031 (2) (1985), provided that a product liability action must be brought within twelve years after the product's first sale. Under this statute, a person injured more than twelve years after the product's first sale had no cause of action against the product manufacturer. However in 1980 the Florida Supreme Court had held that this statute violated the Florida Constitution when it was applied in that situation. *Battilla v. Allis Chalmers Mfg. Co.*, 392 So.2d 874 (Fla. 1980).

On August 25, 1985, after the accident in this case, the Florida Supreme Court overruled *Battilla* and held that the statute of repose did not violate the Florida Constitution when applied to cases where the injury

DECLARATION OF INDEPENDENCE

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, in such a case, dictates that慎重 should be exercised; and that no step should be undertaken which is both great and sudden; but where the long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them to absolute Tyranny, it is their duty, when in the advanced stage of this course, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies, that they have borne with a train of such abuses and usurpations, which, in a former Declaration of the Rights of the Colonies, we have enumerated, and which we now repeat, that they have borne with them for a long time, and with a spirit of patient and humble submission to their unjust and oppressive measures, and with a toleration of increasing injuries, which is itself a proof of the most exalted and generous feelings. But now it is necessary that they should declare the causes which impel them to the separation.

And the Declaration of Independence is hereby made, and the Colonies are hereby declared free and independent States, absolved from all allegiance to the British Crown, and that all political connection with Great Britain, and all dependence upon the British Crown, are hereby totally dissolved.

did not occur until after the repose period had expired. *Pullum v. Cincinnati, Inc.*, 476 So.2d 657 (Fla. 1985), *appeal dismissed for want of a substantial federal question*, 475 U.S. 1114 (1986).

Shortly after the decision in *Pullum*, Ms. Griffin and her father ("Plaintiffs") instituted this action against Ford in the United States District Court for the Northern District of Florida. Ford moved for summary judgment on the basis of *Pullum* and the statute of repose. In response, Plaintiffs argued that *Pullum* should not be applied retroactively to injuries that occurred prior to *Pullum*. The trial court rejected Plaintiffs' argument and granted Ford's motion.

Plaintiffs moved for reconsideration, contending for the first time that application of the statute of repose and *Pullum* to bar their claims deprived them of vested rights in violation of the Florida and United States Constitutions. The trial court denied the motion, and Plaintiffs appealed to the United States Court of Appeals for the Eleventh

The first part of the paper discusses the importance of the study of the history of the United States. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people. The second part of the paper discusses the importance of the study of the history of the United States. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people. The third part of the paper discusses the importance of the study of the history of the United States. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people. The fourth part of the paper discusses the importance of the study of the history of the United States. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people. The fifth part of the paper discusses the importance of the study of the history of the United States. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people. The sixth part of the paper discusses the importance of the study of the history of the United States. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people. The seventh part of the paper discusses the importance of the study of the history of the United States. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people. The eighth part of the paper discusses the importance of the study of the history of the United States. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people. The ninth part of the paper discusses the importance of the study of the history of the United States. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people. The tenth part of the paper discusses the importance of the study of the history of the United States. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people.

Circuit.

While Plaintiffs' appeal in this case was pending in the Eleventh Circuit, the Florida Supreme Court held, as a matter of state law, that its decision in *Pullum* was retroactive and applied to cases that arose before the date of that decision. *Melendez v. Dreis & Krump Mfg. Co.*, 515 So.2d 735 (Fla.1987). The Florida Supreme Court also ruled that retroactive application of *Pullum* did not violate the due process clause of the United States Constitution. *Clausell v. Hobart Corp.*, 515 So.2d 1275 (Fla. 1987). Shortly after the Florida Supreme Court's decision in *Clausell*, the Eleventh Circuit issued its opinion in this case, and several other cases, also holding that the retroactive application of *Pullum* did not violate due process. *Eddings v. Volkswagenwerk, A.G.*, 835 F.2d 1369 (11th Cir. 1988).

Plaintiffs in *Claussell* filed an appeal or, in the alternative, a petition for writ of certiorari, with this Court. Plaintiffs in this case moved for rehearing by

the Eleventh Circuit. The Eleventh Circuit denied rehearing in this case on March 2, 1988. In April, this Court dismissed the appeal in *Clausell* for want of jurisdiction. This Court also denied the petition for writ of certiorari in *Clausell*. *Clausell v. Hobart Corp.*, ___ U.S. ___, 108 S. Ct. 1459 (1988).

Plaintiffs in this case, apparently unaware of this Court's ruling in *Clausell*, filed a petition for writ of certiorari on May 31, 1988. The petition was received by counsel for Ford on June 1, 1988.



ARGUMENT

THE DECISION BELOW IS CORRECT, CONSISTENT WITH DECISIONS OF THE FLORIDA SUPREME COURT AND OTHER COURTS OF APPEAL, AND NOT OF SUFFICIENT IMPORTANCE TO WARRANT REVIEW BY THIS COURT.

Plaintiffs argue that at the time the accident occurred they acquired causes of action in tort as a result of the Florida Supreme Court's decision in *Battilla*, that their accrued causes of action were a property right protected by the due process clauses of the fifth and fourteenth amendments, and that they were denied due process rights when the Florida Supreme Court overruled *Battilla* in *Pullum* and effectively abrogated their causes of action without a hearing.

This is the precise argument that was made and rejected by the Florida Supreme Court in *Clausell v. Hobart Corp.*, 515 So.2d 1275 (Fla. 1987). The relevant facts of *Clausell* were identical to the facts of this case: the accident in *Clausell*, like the accident in

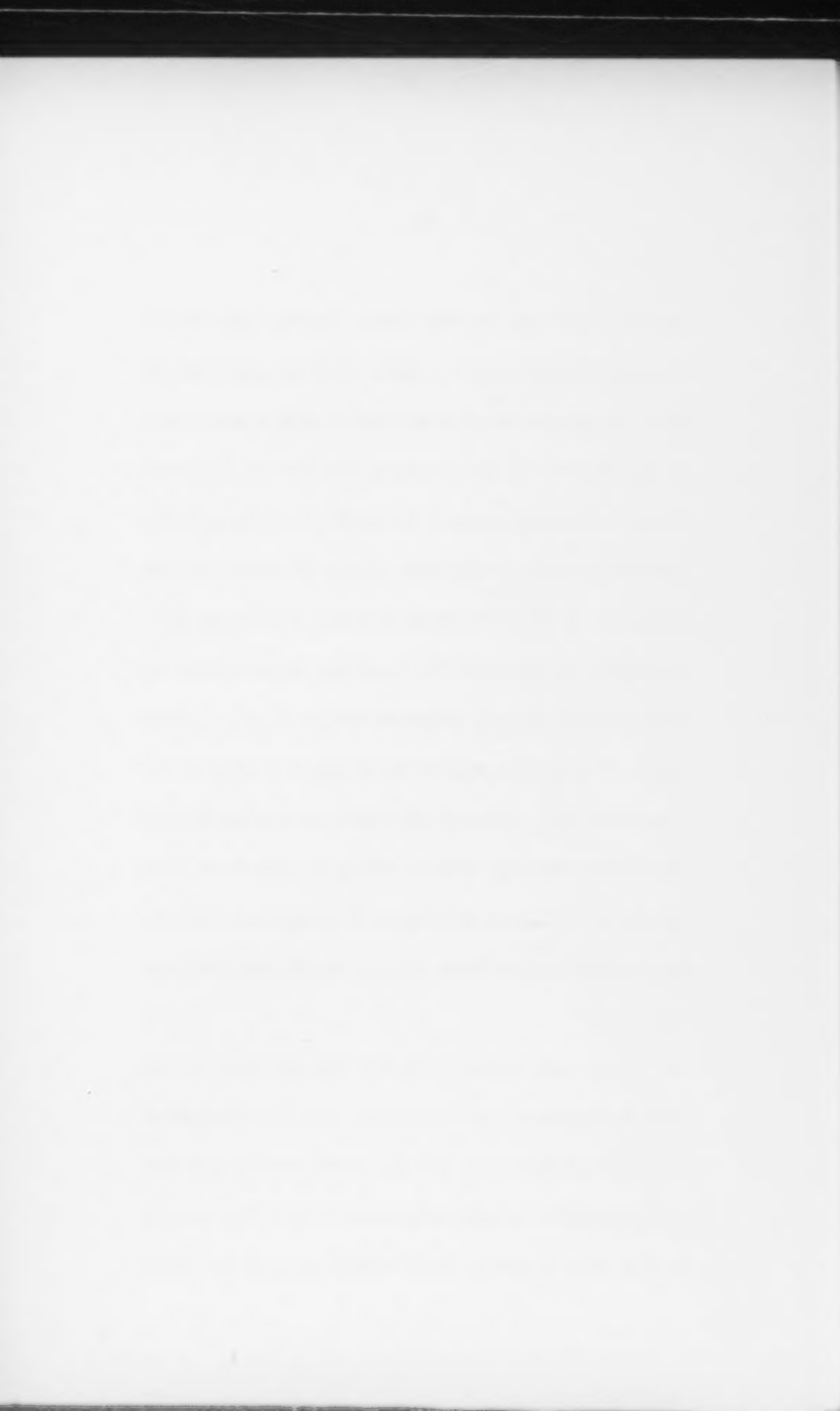
this case, occurred after the twelve year repose period had expired. The accident in *Clausell*, like the accident in this case, occurred after the decision in *Battilla* but before the decision in *Pullum*. The trial court in *Clausell*, like the trial court in this case, granted summary judgment on the basis of *Pullum* and the statute of repose. The plaintiffs in *Clausell*, like the plaintiffs in this case, argued on appeal that the abrogation of their accrued causes of action violated the due process clauses of the fifth and fourteenth amendments. The appellate courts in both cases rejected this argument, and the plaintiffs in both cases sought certiorari in this Court, making the same arguments and citing the same principal authorities.

This Court denied certiorari in *Clausell* only a month and a half before Plaintiffs filed their petition for certiorari in this case. *Clausell* is indistinguishable from this case, and if *Clausell* did not merit review by this Court, neither does this case.

None of the factors listed in Rule 17 support

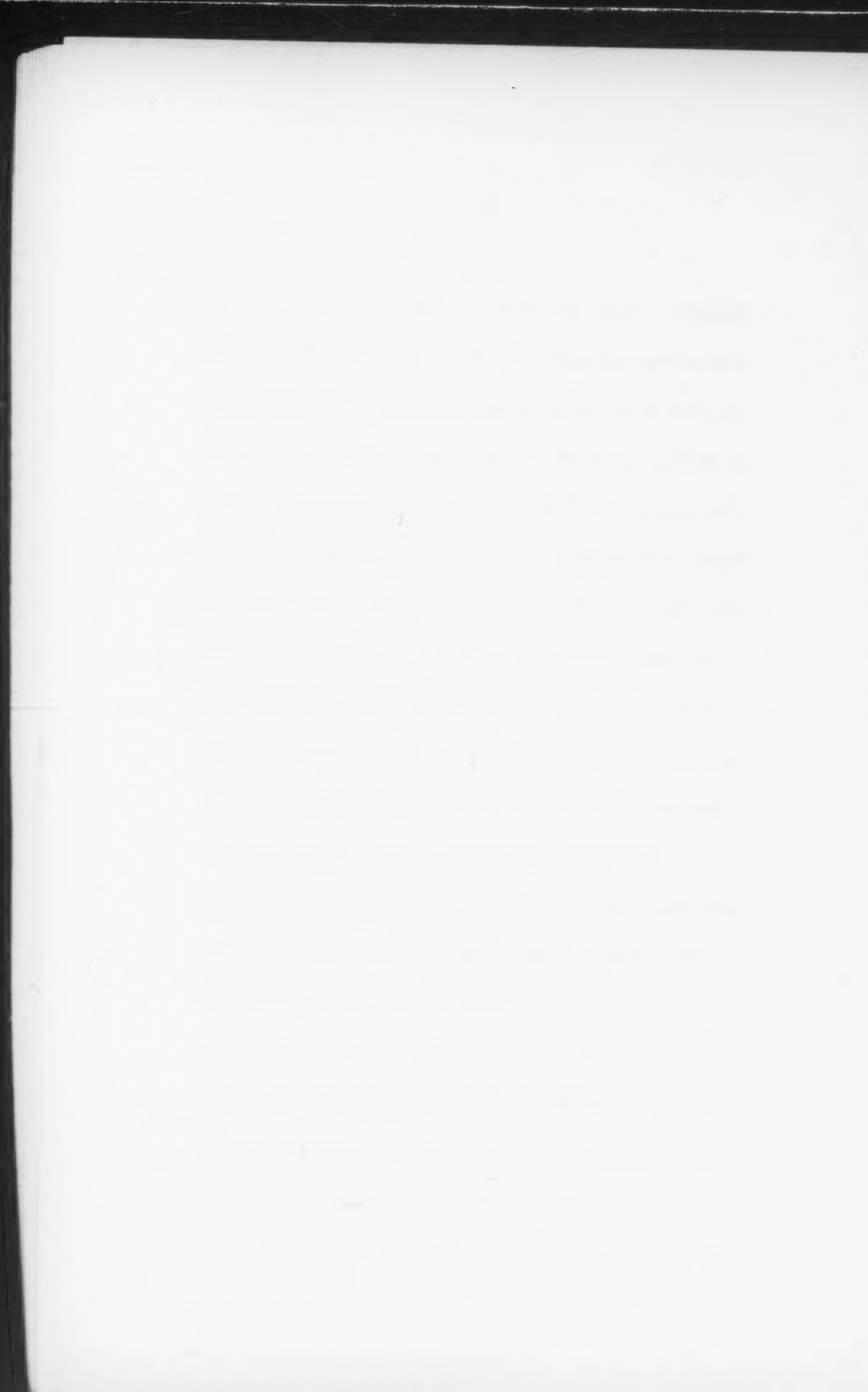
review of this case by this Court. The decision of the Eleventh Circuit is not in conflict with any other federal court of appeals, nor is it in conflict with a state court of last resort. To the contrary, the Florida Supreme Court in *Clausell* came to the same conclusion as the Eleventh Circuit in this case. Plaintiffs claim that the decision of the Eleventh Circuit conflicts with applicable decisions of this Court but, as demonstrated below, Plaintiffs have misperceived the import of those cases. The issue here involves only a few cases in the state of Florida, in which the claim arose after *Battilla* and before *Pullum*, most of which by now have been finally resolved by settlement or judgment, and the issue involved has little, if any, significance beyond this case.

In any event, however, the decision of the Florida Supreme Court in *Clausell* and the decision of the Eleventh Circuit in this case were correct. It is true as the plaintiffs in both cases contended, that a cause of action is a property right which cannot be taken



without "due process." See, e.g., *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). "To say that a cause of action is a species of protected property, however, is not to answer the question of what process is due." *In Re: Consolidated United States Atmospheric Testing Litigation*, 820 F.2d 982, 989 (9th Cir. 1987), cert. denied sub. nom. *Konizeski v. Livemore Labs*, ___ U.S. ___, 108 S. Ct. 1076 (1988) (hereinafter "*Atmospheric Testing Litigation*"). Rather, the requirements of both procedural and substantive due process must be examined.

Plaintiffs characterize their argument as a procedural due process argument. (Petition at 32 n.7) Procedural due process requires that plaintiffs be given notice and an opportunity to be heard on the merits of a cause of action or defense recognized by state law. See, e.g., *Atmospheric Testing Litigation*, 820 F.2d at 989. Plaintiffs in this case had notice and an opportunity to establish a substantive right of recovery. Unfortunately, however, Plaintiffs at the time of the



hearing had no substantive right to recover under Florida law because their injury occurred after the twelve year repose period had expired; Plaintiffs literally had no cause of action. *See, e.g., Rosenberg v. Town of North Bergen*, 61 N.J. 190, 293 A.2d 662 (1972) (where injury occurs after a repose period has expired, "[t]he injured person literally has no cause of action. . .;") "[t]he function of the statute is thus rather to define substantive rights than to alter or modify a remedy"); *Bowman v. Niagara Machine & Tool Works, Inc.*, 832 F.2d 1052 (7th Cir. 1987).

Thus, Plaintiffs' procedural due process claim is without merit, and the principal cases they cite are inapplicable. In both *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), and *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 683 (1930), the state recognized a substantive right but arbitrarily deprived the claimant of a procedure to enforce that right. The opposite is true here; Plaintiffs had a procedure to enforce what substantive rights they had,

but in fact had no such rights under controlling state law. This Court in *Logan* expressly recognized that "the State remains free to create substantive defenses or immunities for use in adjudication -- or to eliminate its statutorily created causes of action altogether." 455 U.S. at 432.

The decision in *Atmospheric Testing Litigation* is particularly relevant here. In that case, a federal statute abrogated the plaintiff's accrued causes of action against private contractors who participated in nuclear weapons testing. In that case, as here, the plaintiffs claimed that the abrogation of their accrued causes of action violated procedural due process. The Ninth Circuit rejected this claim:

On notice of hearing, appellants [plaintiffs] were given the opportunity to present their claims before the district court. The requirements of procedural due process were thereby satisfied. The plaintiffs' claims were simply unavailing under the procedure pursued by them. Procedural due process, however, does not guarantee that a party will prevail.

820 F.2d at 990. *See also Bowman v. Niagara Machine and Tool Works, Inc.*, 832 F.2d 1052, 1054 (7th Cir. 1987) (Plaintiff denied recovery on basis of state of repose "cannot claim he has been denied access to court simply because the Indiana legislature has restricted a particular cause of action in a way that makes it unavailable to him. Such an approach confuses 'access' with 'success,' and Bowman is not constitutionally entitled to the latter.")

Plaintiffs' real claim appears to be that the state of Florida denied them substantive due process by denying them a substantive right of recovery. *See Atmospheric Testing Litigation*, 820 F.2d at 990 ("To the extent that §2212 may have abrogated appellants' causes of action. . . , this Court's analysis will focus on substantive due process.") Absent a fundamental right or suspect classification, however, substantive due process is satisfied if the challenged state action has a rational basis and is not arbitrary or irrational. (*See, e.g., Usery v. Turner Elkhorn Mining Co.*, 428

U.S. 1 (1976); *Atmospheric Testing Litigation*, 820 F.2d at 990; *Hammon v. United States*, 786 F.2d 8 (1st Cir. 1986).

Plaintiffs in this case do not even attempt to argue that the Florida Legislature or the Florida Supreme Court acted arbitrarily or irrationally. The legislature intended the statute of repose to become effective in 1975, and application of the statute in this case therefore furthers the legislature's purpose. The Florida Supreme Court found that "the legislature, in enacting this statute of repose, reasonably decided that perpetual liability places an undue burden on manufacturers, and . . . that twelve years is a reasonable time for exposure to liability." *Pullum v. Cincinnati, Inc.*, 476 So.2d 657, 659 (Fla. 1985), *appeal dismissed for want of a substantial federal question*, 475 U.S. 1114 (1986). The Florida Supreme Court in *Pullum*, therefore, concluded that the statute of repose had a rational and legitimate basis. 476 So.2d at 660. This Court's dismissal of the

appeal in *Pullum* for want of a substantial federal question is a disposition on the merits of this issue. *See Hicks v. Miranda*, 422 U.S. 332, 343-44 (1985).

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

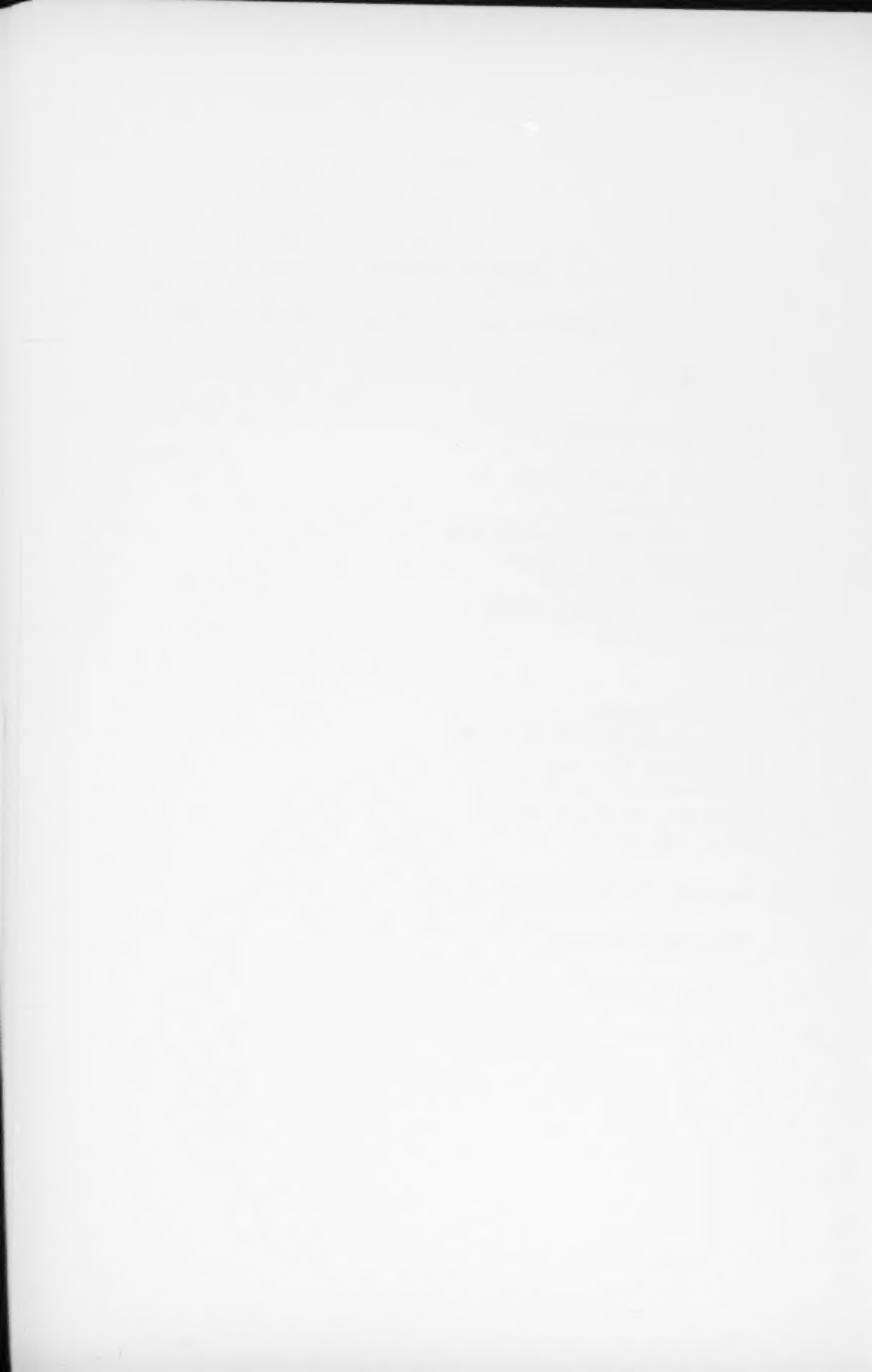
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*Counsel of Record

July 1, 1988



App. 1

APPENDIX

List of subsidiaries (other than wholly owned subsidiaries) and affiliates of Respondent Ford Motor Company (U.S. Sup. Ct. Rule 28.1).

Respondent Ford Motor Company has an interest of 50% or greater, but less than 100% in the following entities:

Oy Ford Ab
Ford Motor Company Aktiebolag
Eveleth Taconite Company
Renaissance Center Partnership
Fairlane Woods Associates (A Partnership)
Park Ridge Corporation
Ford Motor Company Limited
Ford Motor Credit Company Limited
Henry Ford & Son (Finance) Limited
Ford-Werke AG
Ford Credit Bank AG
Ford Motor Company of Canada, Limited
Ensight Limited
Ford Motor Company of Australia Limited
Ford Motor Company of New Zealand
Limited
Ford France S.A.
Ford Motor Company (Belgium) N.V.
Ford Credit N.V.
Ford Italiana S.p.A.



App. 2

Ford Credit S.p.A.
Ford Leasing S.p.A.
Ford Motor Company A/S
Ford Credit A/S
Ford Motor Company S.A. de C.V.
Ford Nederland B.V.
Ford Credit B.V.
Ford Leasing S.A.
Ford Credit S.A.
Transcon Insurance Limited
Ford Lio Ho Motor Company, Lt.
Bayou City Ford Truck Sales
Beltway Ford Truck Sales
Bi-State Ford Truck Sales
Bridge-Haven Ford Truck Sales
Central Ford Truck Sales
Coastal Ford Truck Sales
Crossroads Ford Truck Sales
Deacon Ford Truck Sales
Freeway Ford Truck Sales
Keystone Ford Truck Sales
Lakeland Ford Truck Sales
Liberty Ford Truck Sales
Mid-America Ford Truck Sales
Mid-Cal Ford Truck Sales
Mid-States Ford Truck Sales
Miramar Ford Truck Sales
Mission Valley Ford Truck Sales
Motor City Ford Truck, Inc.
Northside Ford Truck Sales
River City Ford Truck Sales
Sacramento Valley Ford Truck Sales
Shamrock Ford Truck Sales
Sooner State Ford Truck Sales
Southside Ford Truck Sales



App. 3

Trans-West Ford Truck Sales
West Gate Ford Truck Sales
Delta Truck Lease, Inc.
Airport Lincoln-Mercury Sales
Al Meyer Ford, Inc.
Alberts-Johnson Ford, Inc.
Albion-Ford Mercury, Inc.
Allegan Ford-Mercury Sales, Inc.
Alpena Ford Lincoln-Mercury, Inc.
Alpha Lincoln-Mercury Imports
Altoona Ford, Inc.
Auburn Ford Lincoln-Mercury
Aurora Lincoln-Mercury, Inc.
Avalon Lincoln-Mercury, Inc.
Bannister Lincoln-Mercury, Inc.
Baranco Lincoln-Mercury, Inc.
Bear Country Ford Lincoln-Mercury
Beloit Ford Lincoln-Mercury
Berens Lincoln-Mercury, Inc.
Berkeley Lincoln-Mercury, Inc.
Big Valley Ford Lincoln-Mercury
Buffalo Ford-Mercury, Inc.
Burnsville Lincoln-Mercury, Inc.
C & L Lincoln-Mercury, Inc.
Campus Ford, Inc.
Castle Rock Ford-Mercury, Inc.
Centralia Ford-Mercury, Inc.
Champion Ford Sale, Inc.
Clinton Ford Lincoln-Mercury
Coastal Ford, Inc.
Columbus Ford-Mercury, Inc.
Community Ford-Mercury, Inc.
Conway Ford, Inc.
Copper County Ford Lincoln-Mercury
Cornelia Ford Lincoln-Mercury



App. 4

County Ford, Inc.
Courtesy Automobile Sales, Inc.
Courtesy Ford Lincoln-Mercury
Cranberry Lincoln-Mercury, Inc.
Crossroads Ford-Mercury, Inc.
Crown Lincoln-Mercury, Inc.
Del Perry Ford, Inc.
Delaware Ford Lincoln-Mercury
Delta Ford Sales, Inc.
Duryea Ford, Inc.
Dyersburg Ford Lincoln-Mercury
Edgar Ford, Inc.
El Dorado Ford Lincoln-Mercury
Empire Ford, Inc.
Fairlane Lincoln-Mercury, Inc.
Fort Valley Ford, Inc.
Francis Scott Key Lincoln-Mercury
Freedom Ford Sales, Inc.
Frontier Lincoln-Mercury, Inc.
Ft. Walton Beach Lincoln-Mercury
Geneva Ford Sales Inc.
Gold Star Ford Lincoln-Mercury
Golden Ford-Mercury, Inc.
Green River Ford-Mercury, Inc.
Greenville Ford-Mercury, Inc.
Harbor Lincoln-Mercury, Inc.
Heritage Ford-Mercury, Inc.
Highland Lincoln-Mercury, Inc.
Hillsboro Ford-Mercury Sales Inc.
Hilltop Ford, Inc.
Hub City Ford-Mercury, Inc.
Hunt County Ford Lincoln-Mercury
Illini Lincoln-Mercury Sales
Independence Ford, Inc.
Jim Warren Ford-Mercury, Inc.

THE
HISTORY
OF
THE
CITY
OF
NEW
YORK
FROM
1624
TO
1898
BY
JOHN
B. HOGAN
AND
JAMES
M. SMITH
NEW
YORK
1898

App. 5

Lakeland Ford Lincoln-Mercury
Leader Ford, Inc.
Liberty Ford Lincoln-Mercury
Lompoc Ford, Inc.
Los Banos Ford Lincoln-Mercury
Madison Ford Mercury, Inc.
Manhattan Ford Lincoln-Mercury
Marion Lincoln-Mercury, Inc.
McGehee Auto Plaza, Inc.
Mc Intosh O'Hara Lincoln-Mercury
Miramar Lincoln-Mercury, Inc.
Mon Valley Lincoln-Mercury, Inc.
Montesano Ford-Mercury, Inc.
Monticello Ford Lincoln-Mercury
Natchitoches Ford Sales, Inc.
New Castle Ford Lincoln-Mercury
Noble Ford Lincoln-Mercury
Norris Lake Ford Lincoln-Mercury
North Alabama Ford-Lincoln-Mercury
North Country Ford Lincoln-Mercury
Northampton Ford, Inc.
Northwoods Ford-Lincoln-Mercury
Odessa Ford Mercury, Inc.
Olympic Ford of Marysville
Ottawa Ford Lincoln-Mercury
Park Ford Sales, Inc.
Pasadena Lincoln-Mercury, Inc.
Perry Lincoln-Mercury-Merkur
Plainfield Lincoln-Mercury
Progressive Ford-Mercury, Inc.
Quality Ford-Mercury, Inc.
Robert Woodsen Lincoln-Mercury
Rochester Lincoln-Mercury, Inc.
Royal Lincoln-Mercury Sales, Inc.
Royal Ferd Lincoln-Mercury, Inc.



App. 6

Shoals Ford, Inc.
Sonoma Ford, Inc. DBA Sonomoa
Suburban Ford Lincoln-Mercury
Sumter Ford Lincoln-Mercury, Inc.
Sunbelt Ford-Mercury, Inc.
Sunrise Ford Lincoln-Mercury
Swainsboro Ford Lincoln-Mercury
Toner Ford Mercury, Inc.
Town & Country Lincoln-Mercury
Tropical Ford, Inc.
Tuskegee Ford-Mercury, Inc.
Union City Ford Lincoln-Mercury
University Ford of Peoria, Inc.
Verde Valley Ford Lincoln-Mercury
Victory Ford, Inc.
Wauseon Ford, Inc.
Waynesboro Sales & Service, Inc.
West Covina Lincoln-Mercury, Inc.
West Suburban Ford, Inc.
Western Ford Mercury, Inc.
Westwood Ford Lincoln-Mercury, Inc.